

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL CASE 02-527-A
)	
KELLY KATHLEEN LATIMER)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Gene Rossi, Assistant United States Attorney, Mark Lytle, Special Assistant U.S. Attorney, and the defendant, KELLY KATHLEEN LATIMER, and the defendant's counsel, Gregory E. Stambaugh, pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, KELLY KATHLEEN LATIMER, agrees to waive indictment and plead guilty to a two-count criminal information filed with this agreement. Count One of the information charges the defendant with conspiracy to distribute cocaine base (commonly known as "crack"), in violation of Title 21, United States Code, Sections 841(a)(1) and 846. The penalty for this offense is a maximum term of imprisonment of twenty years, a fine of \$1,000,000, a special assessment, and at least three years of supervised release. Count Two of the information charges the defendant with conspiracy to distribute cocaine, in violation of Title 21, United States Code, Sections 841(a)(1) and 846. The

penalty for this offense is a maximum term of twenty years imprisonment, a fine of \$1,000,000, a special assessment, and at least three years of supervised release. The defendant is aware that the supervised release terms are in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant's being returned to prison for the full term of supervised release. The defendant is also aware that this case is governed by 18 U.S.C. §§ 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are "exceptional reasons why such person's detention would not be appropriate."

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. The Court may, pursuant to Section 5E1.2(d)(7) of the Sentencing Guidelines and Policy Statements, order the defendant to pay a fine sufficient to reimburse the government for the costs of any imprisonment, term of supervised release and probation, if any is ordered. The defendant agrees: (a) that any monetary penalty that the Court imposes, including the special assessment, fine, costs or restitution, is due and payable immediately; (b) to submit a completed Financial Statement of Debtor form as requested by the United States Attorney's Office; (c) that the Financial Litigation Unit in the United States

Attorney's Office may receive disclosure of all matters occurring before the grand jury in this and related cases; and (d) to make no attempt to avoid or delay paying any monetary penalty through any bankruptcy proceeding.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742, affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United

States Code, Section 3742, or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the criminal information or accompanying Statement of Facts. Therefore, the defendant does not have immunity for crimes of violence related to, but not specifically set out in, the criminal information or Statement of Facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant represents to the Court that the defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, the defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted

by a judge sitting without a jury if the defendant, the United States and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and the defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would

not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

7. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if

later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

8. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this

agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony.

9. The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask it to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

10. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement

is conditioned upon the defendant providing full, complete and truthful cooperation.

11. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate.

12. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. The defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

13. The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past five years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous five years. Defendant agrees to forfeit to the United

States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last five years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

14. The defendant agrees to forfeit all interests in any drug-related asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense. The defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

15. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take

steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

16. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

17. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

18. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements.

The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

19. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

20. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

21. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed

every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

KELLY KATHLEEN LATIMER
Defendant

22. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Gregory E. Stambaugh, Esq.
Counsel for Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____

Gene Rossi
Assistant U.S. Attorney

APPROVED:

Justin W. Williams
Chief, Criminal Division

Date: _____

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL CASE 02-527-A
)	
KELLY KATHLEEN LATIMER)	

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. On or about August 31, 2002, within the Eastern District of Virginia, the defendant, KELLY KATHLEEN LATIMER, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with others to unlawfully, knowingly, and intentionally distribute a mixture and substance containing a detectable amount of cocaine base (commonly known as "crack"), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

2. From in or about mid-May 2002 to August 31, 2002, within the Eastern District of Virginia, the defendant, KELLY KATHLEEN LATIMER, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with others to unlawfully, knowingly, and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II

controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

3. This Statement of Facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's and other's involvement in the charges set forth in the plea agreement.

4. In or about June 2002, in McLean, Virginia, within the Eastern District of Virginia, the defendant obtained a prescription for 100 (8 mg) Dilaudid (Schedule II controlled substance) pills from a pain management physician.

5. On or about June 20, 2002, in Vienna, Virginia, the defendant filled the Dilaudid prescription at a pharmacy. Shortly after obtaining the Dilaudid pills on June 20, in Manassas, Virginia, within the Eastern District of Virginia, the defendant distributed about thirty pills to conspirator Karen Riley, who was to exchange the pills for cocaine to split with the defendant.

6. In or about August 2002, in McLean, Virginia, the defendant obtained a prescription for 100 (4 mg) Dilaudid pills from a pain management physician.

7. On or about August 6, 2002, in Vienna, Virginia, the defendant filled the Dilaudid prescription at a pharmacy. On September 4, 2002, in Manassas, Virginia, the defendant distributed ten Dilaudid pills to Riley, who was acting under the direction of law enforcement and was wearing a recording device.

The defendant intended that the pills would be exchanged by Riley for cocaine.

8. On or about August 31, 2002, in Manassas, Virginia, the defendant agreed to drive Riley, who had been released that day from jail, to meet a Washington, D.C. crack supplier, who distributed about 3.5 grams of crack to Riley. The defendant and Riley had agreed that the defendant would get a portion of the crack for personal use. The defendant had provided the drug funds (\$360) to Riley, who gave the money to the supplier.

9. From in or about mid-May 2002 to August 31, 2002, in Manassas, Virginia, and elsewhere, Riley obtained cocaine from a regular source and later distributed various amounts (0.5 gram to 3.5 grams) to the defendant on a regular basis. The defendant provided Riley on numerous occasions with funds to obtain the cocaine from Riley's source.

10. During the crack conspiracy, the amount of crack attributable to the defendant is at least three grams but less than four grams, which the defendant knowingly and intentionally conspired to distribute and which was reasonably foreseeable to her. The defendant either shared the crack with Riley or used it herself.

11. During the cocaine conspiracy, the amount of crack and cocaine attributable to the defendant is at least 100 grams but less than 300 grams, which the defendant knowingly and intentionally conspired to distribute and which was reasonably

foreseeable to her. The defendant either shared the cocaine with Riley or used it herself. In addition, during the cocaine conspiracy, the forty Dilaudid pills distributed by the defendant to Riley are relevant conduct for sentencing purposes.

12. The Statement of Facts shall be admissible as a knowing and voluntary confession in any proceeding against the defendant regardless of whether the plea agreement is presented to or accepted by a court. Moreover, the defendant waives any rights he may have under Fed. R. Crim. P. 11, Fed. R. Evid. 410, the United States Constitution, and any federal statute in objecting to the admissibility of the Statement of Facts in any such proceeding.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gene Rossi
Assistant U.S. Attorney

SEEN AND AGREED TO BY:

KELLY KATHLEEN LATIMER
Defendant

Gregory E. Stambaugh, Esq.
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL CASE 02-527-A
)
KELLY KATHLEEN LATIMER)

WAIVER OF INDICTMENT

I, KELLY KATHLEEN LATIMER, the above named defendant, who is accused of conspiracy to distribute a mixture and substance containing a detectable amount of cocaine base (commonly known as "crack") in violation of 21 U.S.C. §§ 841(a)(1) and 846, of conspiracy to distribute a mixture and substance containing a detectable amount of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846, and of health care fraud, in violation of 18 U.S.C. § 1347, being advised of the nature of the charge, the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

KELLY KATHLEEN LATIMER
Defendant

Gregory E. Stambaugh, Esq.
Counsel for Defendant

Before:

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL CASE 02-527-A
)	
KELLY KATHLEEN LATIMER)	

CRIMINAL INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about August 31, 2002, within the Eastern District of Virginia, the defendant, KELLY KATHLEEN LATIMER, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with others to unlawfully, knowingly, and intentionally distribute a mixture and substance containing a detectable amount of cocaine base (commonly known as "crack"), a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

From in or about mid-May 2002 to August 31, 2002, within the Eastern District of Virginia, the defendant, KELLY KATHLEEN LATIMER, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with others to unlawfully, knowingly, and intentionally distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II

controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gene Rossi
Assistant U.S. Attorney